Hospital Shared Services, Inc. ***and*** **International Guards Union of America, Region 6** ***and*** **Ty A. Powell.** Cases 27–CA–14321, 27–CA–14414, and 27–CA–14515

November 30, 1999

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

On February 13, 1997, Administrative Law Judge James L. Rose issued the attached decision. The Respondent and the General Counsel each filed exceptions and a supporting brief, an answering brief to the other's exceptions, and a reply brief to the other's answering brief. The Respondent also filed a motion to reopen the record and a supplemental brief in support of that motion.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order as modified.

Background

The Respondent provides security and other nonmedical services to some 30 Hospitals in Colorado under contract with each of the Hospitals.[3] At issue are the security officers in the Respondent's employ at St. Mary's Hospital in Grand Junction, Colorado.[4] As of the time of the judge's decision, the Respondent had provided security services to St. Mary's for about 15 years.

Sergeant John Barron and security officer Ronald Hutchings began a union organizing campaign at the facility in December 1995, soliciting 11 cards during a week in mid-January 1996.[5] The Union filed its petition on February 12. The election has not been conducted pending resolution of the unfair labor practices alleged in this consolidated proceeding.

The 8(a)(1) Allegations

1. The Respondent excepts to the judge's finding that the Respondent, through its president, George Schiel, violated Section 8(a)(1) when he solicited employee grievances and impliedly promised to remedy them. In support of its exception, the Respondent contends that Schiel prefaced his remarks at every meeting by telling employees that he was not permitted to make any promises of benefits or threats of reprisals in order to influence the election. In addition, the Respondent contends that Schiel responded to certain of the employees' complaints by "defend[ing] the company's position on all major issues." We find no merit in the Respondent's exception.

As stated in *Reliance Electric Co.,* 191 NLRB 44, 46 (1971):

> Where . . . an employer, who has not previously had a practice of soliciting employee grievances or complaints, adopts such a course when unions engage in organizational campaigns seeking to represent employees, we think there is a compelling inference that he is implicitly promising to correct those inequities he discovers as a result of his inquiries and likewise urging on his employees that the combined program of inquiry and correction will make union representation unnecessary [footnote omitted].

Accord: *Palm Garden of North Miami*, 327 NLRB 1175 (1999).

Under the circumstances, we agree with the judge that the Respondent has not rebutted the inference that Schiel's solicitation of grievances carried with it the implication that the grievances would be remedied. That implication is strengthened, not rebutted, by the fact that Schiel told the employees that he would bring some of their concerns to the Hospital's attention while "defending the status quo" as to others. Schiel's response would tend to bolster the implication that the Respondent was implicitly promising to remedy those concerns that it did not flatly deny.[6]

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] In the absence of exceptions, we adopt pro forma the judge's recommended dismissal of the following complaint allegations: *Case 27–CA–14321*: pars. 5(h), (k), and (l); *Case 27–CA–14414*: pars. 5(o) and (p).

In addition to the violations found by the judge, Member Fox would find that the Respondent violated Sec. 8(a)(1) when its highest management official at the facility, Lieutenant Richard Benefield, told an employee that he "felt betrayed" by another employee because of that employee's efforts on behalf of the Union. In Member Fox's view, Benefield's statement, when taken in the context of other threats made during that same conversation, not only "gave immediacy to the [other] threats," as the judge stated, but constitutes an unlawful statement in its own right. See, e.g., *House Calls, Inc.,* 304 NLRB 311, 313 (1991) (employer representative's statement during union organizing campaign that employees were "ingrates who were hitting him when he was down" violated Sec. 8(a)(1) by equating union activity with disloyalty to the employer). Accord: *Ferguson-Williams, Inc.,* 322 NLRB 695, 699 (1996) ("greatly offended" by employee's prounion statements).

[3] The Respondent is a cooperative business enterprise with each Hospital sharing an ownership interest in the Respondent.

[4] The security staff included 12 full-time and 6 part-time employees, including Lieutenant Richard Benefield and Sergeant John Barron.

[5] All dates are 1996 unless otherwise indicated.

[6] We reject our dissenting colleague's contention that Schiel's implied promise to remedy their grievances was negated by the fact that he prefaced his remarks to employees at captive audience meetings by telling them that he was not permitted to make any promises of benefits. "[I]t is immaterial that an employer professes that he cannot make any promises if in fact he expressly or impliedly indicates that specific benefits will be granted." *Michigan Products,* 236 NLRB 1143, 1146 (1978). See also *Windsor Industries*, 265 NLRB 1009, 1016 (1982);

2. The complaint alleges that the Respondent, through its highest on-site management official, Lieutenant Rick Benefield, violated Section 8(a)(1) when he told an employee that another employee was not going to receive a promotion because of his union activity. In support of the allegation, security officer Jason Romero testified that, in a conversation in which Benefield committed other violations of Section 8(a)(1),[7] he also told Romero that he had been intending to promote Hutchings to sergeant but would not do so because of Hutchings' involvement in the union's organizing campaign. Although the judge found the other violations that grew out of the conversation and made reference to Benefield's expressed intention to promote Hutchings, the judge failed to consider whether this particular statement constitutes unlawful coercion in violation of Section 8(a)(1) of the Act. In view of the fact that Romero's credited version of the conversation remains uncontroverted by Benefield, we find that the statement was made and that it interfered with Hutchings' right to engage in union activities, in violation of Section 8(a)(1) of the Act.[8]

3. The complaint also alleges that the Respondent violated Section 8(a)(1) when Benefield told former employee Ty Powell that he would not be rehired because of his former union activity. Powell had worked as a security officer from February 27 to November 18, 1995, when he left to take a job at the Hospital. When he became disillusioned with his new job he approached Benefield in early February to request a return to the Respondent's employ. Benefield replied that he would be glad to take Powell back and even work his hours around Powell's classes. After the union filed its petition, however, Benefield changed his mind, telling Powell that he would not hire him back because he had supported the union before he resigned.[9]

Although the judge found that Benefield's refusal to rehire Powell violated Section 8(a)(3), he did not find that the statement made to Powell separately and additionally violated Section 8(a)(1). In view of the fact that Powell's version of the conversation is uncontroverted and credited by the judge, we find that the Respondent violated Section 8(a)(1) by telling a former employee that he would not be rehired because he engaged in union activity. See *Grimway Farms*, 314 NLRB 73, 74 (1994) (unlawful statement to former employees that they were ineligible for rehire because they engaged in protected concerted activity).

CONCLUSIONS OF LAW[10]

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Charging Party is a labor organization within the meaning of Section 2(5) of the Act.

3. By engaging in the following conduct the Respondent committed unfair labor practices in violation of Section 8(a)(1) of the Act:

(a) Threatening job loss and other reprisals if employees engage in union or other protected, concerted activities.

(b) Attempting to help employees withdraw their authorization cards.

(c) Soliciting grievances from employees and impliedly promising to remedy them.

(d) Promising benefits to job applicants if they would work against union activity.

(e) Interrogating employees about how they intended to vote in the representation election.

(f) Telling an employee that another employee was not going to receive a promotion because of his union activity.

(g) Telling a former employee that he would not be rehired because of his union activity.

4. The Respondent has violated Section 8(a)(3) and (1) of the Act by refusing to rehire a former employee because of his and other employees' union activity.

5. The aforesaid unfair labor practices affect commerce within the meaning of the Act.

AMENDED REMEDY

Having found that the Respondent committed numerous violations of Section 8(a)(1) and a single violation of Section 8(a)(3) when it learned of the Union's petition, including such "hallmark violations" as threats of job loss, the judge concluded that the effects of the threats could not be remedied by traditional means and recommended issuing a bargaining order. The judge placed particular emphasis on the threats by Schiel to the effect that the Hospital would cancel its contract with the Respondent if the employees selected the Union to represent them.[11] While we agree that the threats of job loss

Heartland of Lansing Nursing Home, 307 NLRB 152, 156 (1992) (employer does not rebut inference that it is promising to remedy grievances which it has solicited merely by reiterating repeatedly that he cannot make any promises, where other comments are not in accord with those disavowals). In this case, Schiel's rote disclaimers that he could not promise the employees any benefits were contradicted by his offer to bring the employees' concerns to the Hospital's attention. Thus, the disclaimers did not negate the unlawful effects of that promise.

[7] During that conversation with Romero on the morning of February 16, Benefield also threatened employees with job loss and other reprisals, including physical violence.

[8] See *Madison Kipp Co*., 240 NLRB 879 (1979) (employer threatened employee with loss of promotion).

[9] According to Powell's credited testimony, Benefield told Powell that he "could not rehire me at that time due to the fact that he had just learned that the security officers were trying to start a union and that, since I was part of the original discussion in the union, he could not rehire me because he'd just be rehiring another vote for the union and that he was taking it personally and felt that I was part of that and part of going behind his back to start this union."

[10] Because the judge omitted a conclusions of law section from his decision, we recite the conclusions in full.

[11] Contrary to our dissenting colleague, we find that the judge did resolve the conflict between Schiel's testimony and the employees' tes-

in the form of the Hospital's cancellation made by Schiel are serious, we believe that our traditional remedies are adequate to remedy the effects of the violations in the circumstances here. In particular we note that the threats of contract cancellation were not made by any representative of the Hospital—the entity with the power to carry it out—but were rather the unsupported speculations of the Respondent's official, Schiel, who, according to the testimony of a credited witness, said that the Hospital could either continue the contract with Respondent operating as "a union shop" or could terminate the contract on 30 days' notice. Schiel offered his opinion that the Hospital was more likely to do the latter, out of antiunion animus and fear of possible strikes, because it was his view that the Hospital had retaliated against employees during a past union campaign by nurses. He did not, however, purport to be relating anything that any representative of the Hospital had said to him about the employees' union campaign. In our view, Schiel's remarks were clearly coercive and properly deemed violations of Section 8(a)(1) of the Act because they were predictions not supported by objective facts. However, they were not the same as a plant closing threat made by the employer itself, to be carried out as an "economic reprisal to be taken solely on [its] own volition," as was the case in *NLRB v. Gissel Packing Co.,* 395 U.S. 1422, 618–619 (1969). The other violations found herein do not rise to the level of "hallmark" violations, and we are satisfied that, as such, they are remediable through the Board's traditional remedies. We find, therefore, that an election remains an available, and thus most appropriate, method for determining the employees' uncoerced wishes regarding representation.[12]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Hospital Shared Services, Inc., Grand Junction, Colorado, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraphs 1(f) and (g) and reletter the subsequent paragraph.

"(f). Telling an employee that another employee was not going to receive a promotion because of his union activity.

"(g). Telling a former employee that he would not be rehired because of his former union activity."

2. Delete paragraph 2(b), and renumber the subsequent paragraphs.

3. Substitute the following for relettered 2(c) paragraph.

"(c) Within 14 days after service by the Region, post at its facility in Gran Junction, Colorado, copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 27, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 16, 1996."

4. Substitute the attached notice for that of the administrative law judge.

MEMBER HURTGEN, dissenting in part.

I dissent in two respects.

First, I do not adopt the judge's finding that the Respondent violated Section 8(a)(1) with respect to an alleged threat that the contract between the Respondent and its client, St. Mary's Hospital, would be canceled if employees voted for union representation. I would remand that issue to the administrative law judge for a resolution of witness credibility.

My colleagues acknowledge that "threats of contract cancellation were not made by any representative of the Hospital—the entity with the power to carry it out." Thus, the issue is whether the Respondent, through its president, George Schiel, (1) threatened that the Hospital would cancel the contract with the Respondent in retaliation for the unionization of the Respondent's employees, *or* (2) predicted that the Hospital would cancel the contract if Respondent's labor costs were increased and passed on to the Hospital. In finding that a threat was made, my colleagues do not differentiate between the testimony of employee witnesses and the testimony of

timony on this point, and that he did so by crediting the employees' testimony. In his decision, the judge specifically stated that he agreed with the General Counsel that Schiel's statememts about the possibility that the Hospital would cancel its contract would reasonably have been construed by employees as a threat of job loss "in the context of" other statements Schiel made to the employees, specifically "his reference to employees being fired by the Hospital when another union attempted to organize Hospital employees and that the Hospital was worried about a strike." In making that finding, the judge was necessarily crediting the employee witnesses who testified that Schiel made those other statements. We agree with the judge that, in this context, "Schiel's statement that the Hospital might cancel the Respondent's contract, without offering any supporting objective facts, was not a reasonable prediction of events beyond his control [but a] threat of job loss." See *Reeves Bros., Inc.*, 320 NLRB 1082, 1083 (1996) (prediction that voting in the union would cause customer cancellation of contract an unlawful threat of job loss where statement not substantiated by facts concerning such an action).

[12] In view of our decision, we need not rule on the Respondent's motion to reopen the record. We also find it unnecessary to reach the issue of Barron's supervisory status which, the Respondent alleges, tainted the Union's card majority.

Schiel. The employees testified that Schiel had told them that the Hospital "could pull the contract" or that the Hospital "would basically let [employees] go because they were worried about a strike." Schiel's testimony, however, is markedly different. According to Schiel,

> [I]f there were demands that were significant by the Union and if we responded to those demands, we could end up with an increase in our cost structure, and we would have to decide if we were able to work within that cost structure or pass it on to the Hospital.

Schiel also testified that he had told employees:

> [If] we felt we had to increase our costs, we'd have to go to the Hospital, ask for an increase, and the Hospital would have to make a business decision, and at that time if the Hospital did not want to have increased costs because they were outside their budget or whatever else, they could cancel our contract and do that immediately.

The judge did not explicitly credit either Schiel or the employee witnesses. In my view, unlike the employee witnesses' accounts, Schiel's testimony is consistent with 2 above. I would therefore remand the issue to the judge to make an explicit credibility resolution. Accordingly, I do not join my colleagues in the finding of a violation.

My colleagues point to another statement made by Schiel, and contend that the judge's finding that this statement was made establishes that the judge *did* resolve the aforementioned credibility conflict. I disagree. In my view, the finding as to the other statement did not resolve the credibility conflict. The other statement was that the Hospital fired *its own employees* when a union sought to organize them. This statement refers to the Hospital's actions against its own employees who apparently were once seeking to organize. This is, of course, a matter different from Schiel's comment about what the Hospital might do *vis-a-vis Respondent* if *Respondent's* employees were organized.

I recognize that Schiel also spoke about the Hospital's concern about a possible strike at Respondent's facility. However, this statement is quite consistent with Schiel's testimony. That is, Schiel was speaking of the Hospital's concerns about the possible economic consequences (for the Hospital) of a unionization of Respondent.

In sum, the statements cited by my colleagues do not resolve the fundamental credibility conflict that concerns me. In these circumstances, there is no adequate substitute for an explicit resolution of that conflict.

In addition, I do not agree that Respondent impliedly promised to grant benefits to employees if they rejected the Union. Respondent agent Schiel defended the status quo with respect to certain employee complaints, and he simply said that he would bring other complaints to the attention of the Hospital. Even as to the latter comment, there is no promise of a benefit. Rather, in contrast to the former comment, a favorable resolution was simply not foreclosed. Further, to the extent that there was any ambiguity on this point, the Respondent clarified it by expressly stating that it could not, and would not, make any promises.

I agree with my colleagues that a clear promise of benefit cannot be negated by a "rote" disclaimer of a promise. However, that principle does not aid their position in the instant case. In context, the statement in the instant case (about bringing complaints to the attention of the Hospital) was not a clear and unambiguous promise to remedy those complaints. In the circumstances, the clear and express *disclaimer* of any promise clarifies the ambiguity, i.e., it says that no promises are being made.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid or protection
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten our employees with loss of jobs or other reprisals should they engage in union or other activity protected by Section 7 of the Act.

WE WILL NOT aid our employees in withdrawing their union authorization cards.

WE WILL NOT solicit grievances from our employees and promise to rectify them in order to discourage union or other protected activity.

WE WILL NOT promise benefits to job applicants in order for them to work against employees' union or other protected activity.

WE WILL NOT interrogate our employees concerning their union or other protected activity.

WE WILL NOT refuse to hire applicants for employment because of their and other employees' union or other protected activity.

WE WILL NOT tell an employee that another employee was not going to receive a promotion because of his union activity.

WE WILL NOT tell a former employee that he would not be rehired because of his union activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL make whole Ty Powell for any loss of benefits he may have suffered as a result of our discriminatory refuals to hire him, with interest.

HOSPITAL SHARED SERVICES, INC.

William J. Daly and *Andrea Floyd, Esqs.,* for the General Counsel.
Robert J. Janowitz and *Joseph P. Leon, Esqs.,* of Kansas City, Missouri, for the Respondent.
John Blakley, of Amarillo, Texas, for the Charging Party.

DECISION

STATEMENT OF THE CASE

JAMES L. ROSE, Administrative Law Judge. This matter was tried before me at Grand Junction, Colorado, on several days from October 8 to November 7, 1996,[1] upon the General Counsel's consolidated complaint which alleged that Hospital Shared Services, Inc. (the Respondent or HSS) engaged in violations of Section 8(a)(1) and (3) of the National Labor Relations Act (the Act). It is also alleged that the violations were sufficiently serious to require a bargaining order, inasmuch as a majority of employees in an appropriate unit had signed authorization cards designating the Charging Party as their bargaining representative.

The Respondent generally denied that it committed any violations of the Act and affirmatively contends the discharge of Ron Hutchings was for cause, and that some of the authorization cards were solicited by Supervisor John Barron.

Upon the record as a whole, including my observation of the witnesses, briefs and arguments of counsel, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a corporation with an office and place of business in Grand Junction, Colorado, where it provides security services to St. Mary's Hospital. In the course and conduct of its business, the Respondent annually purchases and receives goods and materials valued in excess of $50,000 directly from points outside the State of Colorado and annually provides services valued in excess of $50,000 directly to St. May's Hospital, which is an acute care Hospital with annual gross revenues in excess of $250,000. The Respondent admits, and I conclude that it is an employer engaged in interstate commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

International Guards Union of America, Region 6 (the Union) is admitted to be, and I find is, a labor organization within the meaning of Section 2(5) of the Act.

[1] All dates are in 1996, unless otherwise indicated.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background Facts

The Respondent has total of about 1500 employees, about 800 of whom are security guards, with its corporate office in Denver, Colorado. The Respondent provides security services for 30 Hospitals in Colorado as a cooperative, meaning that the Hospitals have an ownership interest in the Respondent. For about 15 years the Respondent has provided the security for St. Mary's, 24 hours a day, 7 days a week, employing, as of January 19, 12 full-time and 6 part-time employees (including Lieutenant Richard Benefield and Sergeant John Barron).

In December 1995, the security officers, led by John Barron and Ronald Hutchings, began to organize for the Union. They solicited 11 authorization cards from then current employees between January 11 and 19. The Union then filed a representation petition on February 12.

On February 15 the Respondent's president, George Schiel, and its executive vice president for security, Russ Colling, first met with the employees. They had subsequent meetings on February 16 and 26, March 4, and April 9. During these meetings statements were made which are alleged violative of Section 8(a)(1), to be discussed in detail below. And during this time period, Lieutenant Benefield is also alleged to have made statements violative of the Act.

A Stipulated Election Agreement was signed by the parties on February 26, however the election was not held, since the the charges in this matter had been filed.

It is alleged that on March 14 the Respondent refused to rehire Ty Powell and on March 15 discharged Hutchings both in violation of Section 8(a)(3) of the Act.

Finally, it is alleged that the unfair labor practices were sufficiently serious that they can best be remedied by a bargaining order, and that a majority of employees in an appropriate unit had designated the Union as their bargaining representative.

B. Analysis and Concluding Findings

1. The alleged 8(a)(1) statements

In general, the Respondent argues that the statements made by Schiel and Benefield must be considered in recognition of the employer's right under Section 8(c), which states, in effect, that no expression of views, argument or opinion shall constitute or be evidence of an unfair labor practice, unless such contains a threat of reprisal or promise of benefit. Or, as the Board has said, "The basic test for a violation of Section 8(a)(1) is whether under all the circumstances the employer's conduct reasonably tended to restrain, coerce or interfere with the employees' rights guaranteed by the Act." *Mediplex of Danbury,* 314 NLRB 470, 474 (1994).

Thus, each of the statements by Schiel and Benefield must be analyzed by considering "whether, under all the circumstances, [the] [R]espondent's remarks reasonably tended to restrain, coerce, or interfere with employees' rights guaranteed under the Act." *Sunnyside Home Care Project,* 308 NLRB 346 fn. 1 (1992).

a. The meetings

While the testimony is somewhat vague concerning how many times company officials met with the employees, and exactly what was said, there is a general consensus that there were meetings on February 15 and 16 and three later. And there is a general consensus about the subject matter, if not the

exact words spoken. Thus, Schiel and Colling arrived in Grand Junction in the evening of February 15, and along with Benefield met with the four "swing shift" employees (4 p.m. to 12). Barron testified that Schiel told them that "we had screwed up by not coming to him with our concerns and problems first and by contacting the union. We had painted them into a corner. The Hospital was probably going to dissolve our contract. That it was probably too late."

Schiel, Colling, and Benefield met with all the security officers on February 16. Barron testified that toward the end of the meeting Benefield asked why the employees had not come to him. When Benefield in turn was asked what he would have done if they had, he said, "[T]hat he would have nipped it in the bud." Benefield went on to say, according to Jason Romero, "[H]ow he was upset at John Barron and how he made him a supervisor or a sergeant and that he felt betrayed or stabbed in the back."

Barron and Denning testified that on February 15, Schiel told employees that they should have come to Respondent before contacting the Union, which Schiel admitted.

Diego Pena testified that Schiel asked if was true they were trying to form a union and he asked, "[I]f we could tell him concerns that we had." The employees told him such things as they would like to have a better car, better training and civil insurance coverage.

Pena further testified that Schiel said the Hospital was opposed to union. Schiel told them "that the nurses had tried to form a union before and explained what had happened the last time something arised [phonetic] like this at the Hospital, that—That the union was squelched, so to speak; people were fired because of informing. [Sic.]"

Tim Denning testified that at this meeting it was said that after the meeting the Respondent's officials would meet with Hospital officials "to discuss whether—if HSS still had their contract with the Hospital. We were told that St. Mary's could pull the contract within 24 hours as well as HSS could pull the contract within 24 hours."

At that meeting there was made available to employees copies of a letter prepared by Schiel which read:

> Mr. John Blakely, Jr.
> 5112 Harvard
> Amarillo, TX 79109
>
> Dear Mr. Blakely;
>
> Please withdraw my signature to be represented by the International Guards Union of America, Local #65.
>
> Sincerely,

Schiel next met with the employees on February 26. Barron testified that Schiel stated that Barron and Shaun (Shaun Howell) had been singled out has having a lot of weight with the other employees, that they did not get much recognition and that there would be something in the company newsletter. Schiel also said, "[T]hat he felt that he could be the best one for communication between us and the Hospital, and that if a union was in that it would stop; the communication would stop."

Hutchings testified that Schiel said at this meeting that the Hospital could end the contract in 30 days, but he was going to try to keep the hospital officials from doing so. "He told us that he was, you know, looking into our concerns, and that he was going to try to keep our jobs with St. Mary's, but if that we got a union in there, that St. Mary's would basically let us go because they were worried about a strike."

Hutchings also testified about a meeting with Schiel on March 4. "Mr. Schiel said that he was there to listen to our concerns and to basically take them to St. Mary's and see what he could do about getting them taken care of. He asked us what our concerns was." Hutchings testified that he and others stated several concerns they had. Finally, Schiel said, "[T]hat there were basically three things that St. Mary's could do, and if we voted a union in—number one, they could terminate our contract in 90 days and go with someone else who was cheaper and pay their guys minimum wage, that we would just be out jobs, or that they could keep us on there as a union shop, but that St. Mary's didn't really want a union shop in there because they were worried about a strike."

The Respondent's evidence concerning these meetings is the testimony of Schiel. Colling did not testify and counsel's examination of Benefield was limited to the subject of Hutchings discharge.

Schiel confirmed that he received the representation petition on February 12 and made arrangements for a trip to Grand Junction later that week. He and Colling arrived on the evening of February 15 and then met with the swing shift employees. They met with the rest of the security officers the next day.

Schiel stated that he started the February 15 meeting by saying, "I regretted that the employees had not come to me first." He had a lengthy discussion with employees about some of their concerns. And they talked about the election and "if there were demands that were significant by the union and if we responded to those demands, we could end up with an increase in our cost structure, and we would have to decide if we were able to work within that cost structure or pass it on to the Hospital." He told employees that if "we felt we had to increase our costs, we'd have to go to the Hospital, ask for an increase, and the Hospital would have to make a business decision, and at that time if the Hospital did not want to have increased costs because they were outside their budget or whatever else, they could cancel our contract and do that immediately."

One employee, who was opposed to the Union, asked if anything could be done for those who had signed cards. Schiel testified, "I told him that earlier that morning I had drafted a one-sentence letter that I would make available for anybody that wanted to voluntarily, and anonymously use it, but that I emphasized that I didn't think it would do any good, and we left some copies on the table and some copies in the security office." Schiel testified that this question had also been asked the night before, which prompted his preparing the letter.

On February 26 Schiel returned to Grand Junction, because a representation case hearing had been scheduled, and again met with the employees. He told them the Respondent would cooperate with the Union; he again invited discussion with the employees; and, he again told them how the Respondent was a membership corporation and went through the same scenario concerning passing on costs, should the Respondent agree with the Union to wage increases; and he again talked about the handbilling of the Hospital by another union the previous summer.

Schiel returned and had small meetings with employees on March 3 and 4 in order "to get a little better read on Mr. Benefield. I had heard in the previous meetings people talking about lack of responsiveness, lack of training, some other things and I wanted to try to get a little better read—on that and get it done

in small groups, to the extent I could." And finally, he wanted to make sure the employees understood how the security program was structured on a cost basis.

The allegations of unlawful conduct by Schiel at the meetings are contained in paragraphs 5(a), (b), (c), (g), (h), (j), (k), (m), and (n).[2]

The facts set forth in paragraph 5(a)—that employees should have come to the Respondent before contacting the Union—is supported by the testimony, including that of Schiel. While this statement does not include a threat of reprisal or promise of benefit, during the course of the meeting threats were made. A similar comment in similar circumstances was made in *Crown Cork & Seal Co.,* 308 NLRB 445 (1992), and found to be unlawful, though such was not included in the Board's remedial order or notice. I therefore conclude that the allegation in paragraph has been sustained.

In the meeting of February 16, when asked what he would have done if he had known about the employees' interest in the Union, Benefield said, "I would have nipped it in the bud." I disagree with counsel for the Respondent that such is benign phraseology. I conclude there is an implicit threat in such a statement and that in context, the Respondent violated Section 8(a)(1) as alleged in paragraph 5(b). The remaining part of Benefield's statement, that he felt betrayed by Barron, tends to give immediacy to the implied threat, but does not, as alleged in paragraph 5(c) does not seem, in itself, to imply a threat or a promise. Thus, I shall recommend that paragraph be dismissed.

At the first general meeting of employees on February 16, an antiunion employee asked how those who had signed cards could get them back and Schiel said that the had prepared a letter to send to the Union. The Respondent argues that this was simply a ministerial act on Schiel's part and was not an attempt to solicit employees to retract their cards, citing *Poly Ultra Plastics,* 231 NLRB 787 (1977). I reject this argument. Unlike the case cited, here Schiel in fact prepared the letter, had copies of it to hand out at the meeting and to be available in the security office. At the time there was no effort by employees who had signed cards to revoke them. Schiel's act was much more than minimal support for employees to renounce the Union and was violative of Section 8(a)(1) as alleged in paragraph 5(g). *Chelsea Homes, Inc.,* 298 NLRB 813 (1990).

In paragraph 5(h) it is alleged that Schiel told employees that by signing and withdrawing support from the Union, "he could buy them some time and maybe save their jobs." The credible testimony from the General Counsel's witnesses is that Schiel made no such comment when presenting the letters. Thus, I conclude that the allegation in this paragraph is not factually supported; however, that does not take away from violation found concerning Schiel's soliciting employees to sign and send the letters. This allegation neither significantly adds nor detracts from the essential violation.

The allegation of threatened discharge in paragraph 5(j), as to Schiel, appears based on his overall statements to employees at the February 15 and 16 meetings. Counsel for the General Counsel argue that his reference to employees being fired by the Hospital when another union attempted to organize Hospital employees and that the Hospital was worried about a strike implied a threat of job loss. Especially this is so in the context of Schiel also suggesting that the Respondent might lose its contract with the Hospital. I agree with counsel for the General Counsel that in context, Schiel's statements would reasonably be construed by employees that their jobs were at risk for having engaged in union activity. *Mediplex of Danbury,* 314 NLRB 470 (1994). Schiel's statement that the Hospital might cancel the Respondent's contract, without offering any supporting objective facts, was not a reasonable prediction of events beyond his control. It was a threat of job loss. *Crown Cork & Seal Co.,* supra.

In paragraph 5(k) it is alleged that Schiel told employees he could negotiate for them better than the Union. Hutchings testified that Schiel made a statement to this effect on February 16. Schiel denied making such a statement. I tend to credit Schiel's denial. Further, the statement, as relayed by Hutchings, makes no sense. The employees through the Union would deal with the Respondent, not the Hospital. I conclude that the allegation in paragraph 5(k) has not been sustained as a separate violation of the Act.

On March 4, Schiel is alleged to have solicited employee grievances (par. 5(m)) and promised to rectify them (par. 5(n)). Schiel testified that at the March 4 meeting, as well as the earlier ones, he sought to discover the employees' concerns. The employee witnesses all testified that Schiel asked about their concerns and they told him. Though as an abstract proposition the expressed willingness of a company to listen to employee concerns may not violate the Act, in a context such as here, solicitation does. Schiel was attempting to dissuade employees from their fledgling organizational campaign and did so in part by asking about their concerns, which necessarily implied that they would be corrected. Such violates Section 8(a)(1). *Bakerfield Memorial Hospital,* 315 NLRB 596 (1994).

Though some of the detail plead by the General Counsel I conclude either did not occur or was not violative of the Act, overall I conclude that Schiel undertook to interfere with the employees' right to organize by threats of job loss, solicitation of grievances with implied promises of benefits and attempting to aid them in renouncing the Union.

b. The additional statements of Benefield

Apart from the meetings, Benefield is alleged to made certain statements to employees and others in violation of Section 8(a)(1). Although Benefield testified about the facts leading to Hutchings' discharge, he was pointedly not questioned about any of the 8(a)(1) allegations. These findings are therefore based on the undenied, and generally credible testimony of the General Counsel's witnesses.

On the morning of February 16, when Hutchings reported for work he had a brief discussion with Benefield. Hutchings testified that Benefield said, "[Y]ou know what you guys are doing is ignorant. And I said, 'Oh?' And he said, 'Yes.' We're probably all going to lose our jobs because of this." Similarly, Romero testified that he talked to Benefield that morning and Benefield said, "You know that we all screwed up, meaning all the security officers by going to the union, and that we were all going to lose our jobs, that we had all cut our own throats because, you know, we were all going to get fired." These are clear threats of discharge for employees having engaged in protected activity and are clearly violative of Section 8(a)(1).

Romero testified that Benefield went on to say that if he had known of the union activity he would have "nipped it in the bud" and that he felt betrayed by Barron. And, toward the end,

[2] There is no evidence concerning the allegation in par. 5(o), nor did counsel for the General Counsel make reference to this allegation in their brief. Accordingly, I will recommend it be dismissed.

Benefield told Romero that that if he lost he job because of the union "if he sees any of us out on the street, he's going to settle it with us." Although such a statement is very contingent, it no doubt conveys the message of a physical threat to employees for engaging in protected activity and is thereby violative of Section 8(a)(1).

About February 14 or 15 Tim Denying was informed that he would be hired by the Hospital and he gave the Respondent 2 weeks' notice. He talked to Benefield about continuing as a security officer on a part-time basis. Benefield said he would have to check. Later Benefield told Denning "that George Schiel was considering keeping me on part-time if I helped bust the union," to which Denning responded, "Fine." However, nothing more came of this. In any event, such a statement by Benefield is a promise of benefit to an employee to engage in anti-union activity and is therefore violative of Section 8(a)(1).

Shaun Howell testified that during this period, though the date was unspecified, Benefield told him that "we were going to wind up having our contract canceled because of the union." Benefield also said, when Howell indicated that he was going to have to get a second job, "if everything had been left alone, we wouldn't be looking for new jobs." And just before the scheduled vote, Benefield asked Howell, "[I]f I'd be voting for or against the union." By these statements Benefield clearly engaged in unlawful interrogation and made threats of job loss as a result of employees having engaged in protected activity.

In paragraph 5(l) it is alleged that Benefield told an individual not in employ of the Respondent that the Respondent was going to offer each employee a $1-per-hour wage increase to keep them from voting for the Union. Duane Kent so testified. While I find this statement occurred in substance as testified to by Kent, I do not believe that the Respondent thereby violated the Act. Kent was not at the time an employee of the Respondent, nor had he been for more than 2 years. Their conversation took place at a bar, and not on or near the Hospital. There is simply no nexus between what Benefield said and any employee.

On morning after Denning went to work for the Hospital, he saw Benefield and stopped to say hello. Benefield "just looked at me and said, I heard you snitched me off, you son of a bitch." This is alleged to have been violative of Section 8(a)(1). I disagree. Denning was not an employee, and in any event, there is really no implied threat or promise in this statement.

Nevertheless, the established pattern of conduct by Benefield during the organizational campaign demonstrates interference with employees engaging in protected activity by threats and promises of benefits. Through Benefield, the Respondent engaged in the violations of Section 8(a)(1) alleged in paragraph 5, although I will recommend dismissal of paragraphs 5(l) and (p).

2. The alleged 8(a)(3) violations

a. Ronald Hutchings

Hutchings had worked for the Respondent about 1 year and was generally considered a good employee, such that before these events Benefield had expressed the intention to promote him to sergeant. He was also instrumental in bringing about the organizational campaign for the Union. He, along with Barron, solicited employees and passed out cards. He was discharged on March 15. Schiel made the discharge decision, which was communicated to Hutchings by Benefield. Since Benefield was unable to reach Hutchings, he left a message on Hutchings' answering machine giving the following reasons, according to Benefield's testimony: "Inappropriate possession of a master key while off duty, being in a locked area with a female Hospital employee and, also, lying to me. He lied to me about the previous day."

The General Counsel argues that the asserted reasons for discharging Hutchings are shifting and dubious. Therefore, I should infer that the true reason was his active part in soliciting authorization cards. The Respondent argues that it had cause to discharge Hutchings, as it had previously other employees who engaged in similar conduct. I agree with the Respondent. Even if the timing of Hutchings' discharge with his union activity make out a prima facie case of discrimination, I believe he would have been discharged in the absence of such activity. Thus I conclude that the Respondent met its burden under *Wright Line,* 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981).

The three reasons given for discharging Hutchings all relate to the Respondent's reasonably founded conclusion that he had been having an affair with a female Hospital employee.

Thus on March 13 Hutchings came to the Hospital while off duty and asked a fellow employee who was on duty for the master keys. His asserted purpose for needing the keys was to put a document Kathy Standeford's office—the woman whom the Respondent later learned he had been spending a great deal of time with during duty hours. However, Hutchings also testified that the reason he was at the Hospital while off duty was to finish his shift report, which should have been turned in the day before. What this has to do with his request and use of master keys is not explained.

In any event, Hutchings did get the mater keys and use them to enter a Hospital office, without authorization. The Respondent has discharged other employees for the unauthorized use of master keys. Even though the other incidents involved different circumstances, it is nevertehless difficult to imply an unlawful motive from this reason.

The next day Hutchings asked and received permission to leave work for a "rehab" appointment at 9 a.m. When at 9:15 a.m. Benefield did not see Hutchings' radio in the security office, he called to find out where Hutchings was. Hutchings replied that he was in the Medical Office Building (MOB) and said his appointment was not until 9:30 a.m. Benefield went to the MOB and found Hutchings with Standeford.

Romaro testified that from about December 1995 he had observed Hutchings and Standeford spending time together. Hutchings "would perform his duties at times, but most of the time, he was socializing with her." "Talking, hugging, kissing, holding hands." One time in early February he found them a stairwell of the MOB. Hutchings asked him not to tell anyone and he did not. I credit Romaro, and note that he was called a witness by the General Counsel after Hutchings. Hutchings did deny the stairwell incident in examination before Romaro testified. I discredit this denial. Hutchings was not recalled to rebut Romaro's other assertions, which include detail not necessary for this decision.

Romaro testified that he finally "was just getting fed up with doing everything on the day shift" and he told Benefield about Hutchings and Standeford. According to Romaro this was the day before Hutchings was discharged.

Benefield testified, also credibly, that on March 14 as Romaro was reporting for work Benefield told him of the master keys incident. Romaro then asked Benefield to step outside and

relayed to him that "Ron and Kathy Standeford had been having an affair at the Hospital for the last two months and that he was tired of if because it left him to cover all the calls . . . ." Romaro also told Benefield the location of their meeting place on the fifth floor of the MOB.

Although Hutchings admitted that he was in an empty office with Standeford on March 15, he contends that he was there to comfort Standeford whose father was in the Hospital with a heart condition. Though credible as to other matters, Hutchings testimony about the events the 2 days before his discharge is not. But even if this is true, the circumstances under which Benefield found them, along with the other evidence of Hutchings behavior, are sufficient to justify the belief that Hutchings was engaging in activity for which he should be discharged. The fact that one engages in union activity does not give him immunity from discipline or discharge for cause. I conclude that the credible evidence preponderates in favor of finding that Hutchings was discharged for cause and not because of his activity on behalf of the Union. I shall recommend that paragraph 6(a) be dismissed.

b. The failure to rehire Ty Powell

Ty Powell worked for the Respondent from February 27 to November 18, 1995, at which time he resigned for a job at the St. Mary's Hospital lab. However, by February he was having some difficulty with coemployees and decided to seek a return to work for the Respondent. He talked to Benefield who "said there wouldn't be any problems, that he would hire me back at any time when I was ready. He wouldn't guarantee me how many hours he could give me or how many days, but he said he'd be glad to have me back." Powell also told Benefield that he would be starting a law enforcement training course in June or July. Benefield said that would be no problem, that he would be able work Powell's hours around school.

On March 14 Powell made the decision to give notice to the Hospital but he wanted to check again with Benefield to make sure he had a job with the Respondent. He talked to Benefield that day and Benefield "told me that he could not rehire me at that time due to the fact that he had just learned that the security officers were trying to start a union and that, since I was part of the original discussion in the union, he could not rehire me because he'd just be rehiring another vote for the union, and that he was taking it personally and felt that I was part of that and part of going behind his back to start this union." In fact Powell had been part of the union discussions before he resigned.

Benefield went on to say that an election had been scheduled for March 28 "and that after the election went through, he would see where it went after that." Powell testified that he subsequently talked to Benefield a couple times, and got the same answer—"that he still couldn't rehire me due—until after the election for the union." Another time, Benefield said that he had talked to George Speliotis (an assistant director of security) who "said the same thing, that he could not rehire me because they'd be hiring in another vote for the union, and that we'd just have to wait and see."

The testimony of Powell is credible and was undenied by Benefield. Thus it is clear that Powell was not rehired in March because of his earlier activity on behalf of the Union, and because of the union activity in general. Further, records of the Respondent show that jobs were available from and after March 14. Ronnie McDonald was hired on March 22 and Benjamin Mantz was hired on April 9.

The Respondent argues that Powell's claim of asking for a job does not make sense, since he would be leaving a full-time job for an entry level part-time job with the Respondent. And, had he been hired Powell would not have been eligible to vote since the payroll cutoff date was February 17.

Neither of these points address Powell's testimony of his conversations with Benefield, who was called as a witness by the Respondent but was not interrogated about this event. Thus the overwhelming credible evidence is that Powell applied for employment and was turned down for reasons violative of Section 8(a)(3) of the Act. I shall recommend an appropriate remedial order.

REMEDY

The General Counsel argues that the Union had been designated by a majority of employees in an appropriate bargaining unit at the time the Respondent embarked on its campaign of unfair labor practices. Therefore, the remedy should include a bargaining order, citing *NLRB v. Gissel Packing Co.,* 395 U.S. 575 (1969).

It is alleged that the following is an appropriate unit for purposes of collective bargaining within the meaning of Section 9(b):

> All employees of Respondent performing security services at St. Mary's Hospital in Grand Junction, Colorado; excluding all other employees and supervisors as defined in the Act.

This defines a traditional guard unit, the appropriateness of which the Respondent stipulated in the representation case. Accordingly I find that such defines the appropriate unit here.

Including Barron, but excluding Benefield, as of January 19 there were 17 employees in the unit, of whom 11 had signed authorization cards. Thus a clear majority had designated the Union as their bargaining representative.

The Respondent argues, however, that this majority was tainted because at least three of the cards were solicited by Barron, whom the Respondent maintains was a supervisor within the meaning of the Act. The Respondent argues that the bargaining unit would be 16, of whom only 7 signed valid cards. Therefore the Union did not have an uncoerced majority and a bargaining order would not be an appropriate remedy, even if some unfair labor practices occurred.

Barron was hired as a security officer on July 29, 1993. On July 10, 1995, he was promoted to assistant facilities security supervisor, given the rank of sergeant and an increase in hourly wages from $6.90 to $7.35. The Respondent argues that he has been a supervisor within the meaning of Section 2(11) of the Act in that he has, and has exercised, the power to responsibly direct employees, adjust their grievances and reward or discipline them.

I disagree. While Barron's competence was recognized with a promotion, the evidence is too thin to conclude that he was given actual supervisory status. He is a relatively long-term employee whom others look to for some guidance. But this does not mean he has the power of a supervisor. He was and remains a security guard. He works the swing shift (4 p.m. to 12 a.m.) along with three others, but he does not direct them, nor does it appear he exercises independent judgment in telling the others what to do and how to do it. The guard jobs are fairly autonomous, with the basic instructions being given in

training, and special instructions by Benefield in the "pass it on log."

The Respondent notes that on August 3, 1995, after Benefield had made a written report criticizing the behavior of James Davidson, Barron wrote a reprimand to be placed in Davidson's personal file. Barron explained that he wrote the warning instead of Benefield, because Benefield had been the object of Davidson's conduct and he did so at Benefield's request. And he worte a reprimand to Robert Leisten for having 11 pieces of nonwork related material, noting that Benefield had warned Listen about this in the past. I do not believe these two incidents involved the exercise of independent judgment.

Barron also wrote two letters in which he indicated he had some kind of managerial status—one to a construction company and another on behalf of a fellow guard thanking a family of a patient who had written commending the guard. While such letters may be some indicia of status, neither prove that in fact Barron had supervisory authority over other employees.

The Respondent also contends that one weekend when Barron was off duty, he was called to the Hospital because Davidson and Powell had a conflict involving a horse-play incident. Barron came as requested and talked to them. Such, I conclude, does not amount to adjusting grievances. A senior, respected employees was asked by other employees to help defuse a problem. While this is the kind of thing supervisors do, that Barron was called on one time does not cloak him with supervisory authority.

The Respondent also notes secondary indicia of supervisory status, such as the view of other employees. He certainly was considered by others to have senior status, and some witnesses thought of him as their "boss." And he too considered he had senior status. He was, after all, a sergeant. However, he wore a blue shirt, as did the other employees, whereas Benefield wore a white shirt. Barron was paid 45 cents more than the highest paid other employee (about 6.5 percent) whereas Benefield was paid $3 more (about 43.4 percent).

The Respondent notes that if Barron is not a supervisor, then the ratio of supervisors to employees would be 17 to 1, which is very high. Whereas, if he is a supervisor, then the ratio would be a more realistic 8 to 1. Although ratio is a significant consideration, particularly in the industrial setting, where production employees are actually directed in their work, it is not of much importance here. There simply is not a significant amount of direct supervision of security officers. Thus, whether there is 1 supervisor to 17 employees or 8 would not make much difference. Further, since the Respondent's operation called for 24-hour-a-day, 7-day-a-week manning, and since Benefield and Barron each work 40 hours a week, there are 88 hours a week when neither is present. At these times, the security officers have no superior on duty, yet manage to do their jobs with no apparent difficulty. If at these times something really serious happens, then a more senior person is called, and that could be Barron. But there is only one reported incident of something like this happening.

On balance, I conclude that Barron was a senior employee whose direction of other employees involved routine decisions and not independent judgment. Thus he is not a supervisor as defined in the Act. E.g., *S.D.I. Operating Partners, L.P.,* 321 NLRB 111 (1996). Therefore, he would be included in the bargaining unit and the cards he solicited should be counted.

The Board has many times considered whether an employer's unfair labor practices fell within category two of *Gissel*—the "less extraordinary" cases but of sufficient severity that dissipating their effects through traditional remedies is unlikely. The Board has sometimes found the unfair labor practices not so serious as to warrant a bargaining order. E.g., *Sangamo Weston, Inc.,* 273 NLRB 256 (1984).

However, where violations are serious, then a bargaining order is warranted if a majority of employees in an appropriate unit had designated a representative. And the Board has long held that "the threat of job loss (i.e., discharge, layoff, and plant closure) because of union activity is among the most flagrant kind of interference with Section 7 rights and is more likely to destroy election conditions, and to do so for a longer period of time, than other unfair labor practices. *Sheraton Hotel Waterbury,* 312 NLRB 304, 305 (1993).

I conclude that the threats here were of such severity. Benefield made direct threats of job loss to several employees and impliedly threatened retribution by stating that if he had known of the union activity he would have "nipped it in the bud."

More insidiously, and I believe more seriously, were the repeated statements by Schiel that the Hospital would cancel its contract with the Respondent. He warned, without offering any factual support, that a wage increase would have to be passed on and accepted by the Hospital, but it might not do so. If not, the Hospital would cancel its contract with the Respondent. He also told employees how the Hospital had treated an organizational campaign the year previously and how the Hospital was afraid of strikes. In short, he made the Hospital the "heavy" implying that if the employees chose the Union, he would be powerless to stop the Hospital from ceasing to do business with the Respondent. This was a clear threat of job loss over which the Respondent would have no control.

The effects of this kind of threat I conclude would be long lasting and could not easily be remedied by traditional means. I conclude that a bargaining order in this case is appropriate.

Accordingly, I shall recommend that Respondent cease and desist from committing the unfair labor practices found and take certain affirmative action designed to effectuate the policies of the Act, including making whole Ty Powell for any losses he suffered from March 14 until June 19, when he was offered a job, pursuant to the formula set forth in *F. W. Woolworth Co.,* 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded,* 283 NLRB 1173 (1987). I shall also recommend that the Respondent recognize and bargain with the Union as the duly designated representative of employees in an appropriate unit.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended [3]

ORDER

The Respondent, Hospital Shared Services, Inc., Grand Junction, Colorado, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening job loss and other reprisals should employees engage in union or other protected, concerted activity.

(b) Attempting to help employees withdraw their authorization cards.

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(c) Soliciting grievances from employees and impliedly promising to rectify them.

(d) Promising benefits to job applicants if they would work against union activity.

(e) Interrogating employees about how they intended to vote in the representation election.

(f) Refusing to hire a job applicant because of his and other employees' union activity.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.[4]

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make Ty Powell whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in accordance with the formula set forth in the remedy section, above.

(b) On request, recognize and bargain with the Union as the exclusive representative of employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement, the certification year to begin when the Respondent recognizes the Union and begins to bargain in good faith. The appropriate unit within the meaning of Section 9(c) is:

> All employees of the Employer performing security services at St. Mary's Hospital in Grand Junction, Colorado; BUT EXCLUDING supervisors as defined in the Act and all other employees.

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying all payroll records, social security payments records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facility in Grand Junction, Colorado, copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 27, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

The complaint allegations not specifically found are dismissed.

[4] While serious, it does not appear that these are unfair labor practices warrant a broad remedial order. *Crown Cork & Seal Co.,* supra.

[5] In the event that the Board's Order is enforced by a judgment of the United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall be changed to read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."